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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Albania,* Andorra,* Argentina, Armenia,* Austria, Belgium,* Bolivia (Plurinational State of),* Bosnia and Herzegovina,* Botswana, Brazil, Bulgaria,* Burkina Faso, Chile, Colombia,* Congo, Costa Rica, Croatia,* Cuba, Cyprus,* Czech Republic, Denmark,* Ecuador,* El Salvador,* Estonia, Finland,* France, Georgia,* Germany, Greece,* Guatemala,* Honduras,* Hungary,* Iceland,* Ireland, Italy, Latvia,* Lithuania,* Luxembourg,* Malta,* Mexico, Monaco,* Montenegro, Netherlands,* Nicaragua,* Norway,* Panama,* Paraguay,* Peru, Poland,* Portugal,* Romania, San Marino,* Serbia,* Slovakia,* Slovenia,* Spain,* Sweden,* Switzerland,* the former Yugoslav Republic of Macedonia, Timor-Leste,* Turkey,* United Kingdom of Great Britain and Northern Ireland, Uruguay,* Venezuela (Bolivarian Republic of): draft resolution

25/... Rights of the child: access to justice for children

The Human Rights Council,

Emphasizing that the Convention on the Rights of the Child constitutes the standard in the promotion and protection of the rights of the child, reaffirming that States parties to the Convention shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized therein, and, bearing in mind the importance of the Optional Protocols to the Convention, calling for their universal ratification and effective implementation, as well as of other human rights instruments,

Welcoming the twenty-fifth anniversary of the adoption of the Convention on the Rights of the Child,

Welcoming also the expected entry into force on 14 April 2014 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure,

Reaffirming relevant resolutions on the rights of the child of the Commission on Human Rights, the Human Rights Council and the General Assembly,

* Non-member State of the Human Rights Council.

Recalling its resolution 24/12 of 26 September 2013 on human rights in the administration of justice, including juvenile justice,

Recalling also its resolutions 5/1, on institution-building of the Human Rights Council, and 5/2, on the Code of Conduct for Special Procedures Mandate Holders of the Council, and stressing that all mandate holders shall discharge their duties in accordance with those resolutions and the annexes thereto,

Reaffirming that the general principles of the Convention on the Rights of the Child, including the best interests of the child, non-discrimination, participation, survival and development, provide the framework for all actions concerning children,

Noting with appreciation the work of the Committee on the Rights of the Child and of other United Nations treaty bodies regarding children's access to justice,

Welcoming also the attention paid by the special procedures of the Human Rights Council to the rights of the child in the context of their respective mandates, in particular by the Special Rapporteur on the sale of children, child prostitution and child pornography, and noting with appreciation the annual report of the Special Rapporteur to the Human Rights Council,[1] in which she provided an overview of the main issues relating to her mandate,

Acknowledging the important contributions of the Special Representative of the Secretary-General on Violence against Children and of the Special Representative of the Secretary General for Children and Armed Conflict to the promotion and protection of the rights of the child, and taking note of their recent reports,

Recalling the joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children,[2] in which they provided an overview of accessible and child-sensitive counselling, complaint and reporting mechanisms to address incidents of violence, and the joint report of the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and response to violence against children within the juvenile justice system,[3]

Recalling also the study by the Expert Mechanism on the Rights of Indigenous Peoples on access to justice in the promotion and protection of the rights of indigenous peoples,[4]

Recalling further the relevant United Nations rules and guidelines for the treatment of children in contact with the justice system, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),[5] the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules),[6] the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),[7] the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines),[8] the Guidelines on Justice in Matters involving Child Victims and

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[1] A/HRC/25/48.
[2] A/HRC/16/56.
[3] A/HRC/21/25.
[4] A/HRC/24/50 and Corr.1.
[5] General Assembly resolution 40/33, annex.
[6] General Assembly resolution 45/113.
[7] General Assembly resolution 45/112.
[8] Economic and Social Council resolution 1997/30, annex.

Witnesses of Crime,[9] the Guidelines for the Appropriate Use and Conditions of Alternative Care for Children,[10] the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,[11] the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)[12] and the basic principles on the use of restorative justice programmes in criminal matters,[13] and taking note of the guidance note of the Secretary-General on the approach of the United Nations to justice for children of September 2008,

Stressing the importance of preventing violations of the rights of the child before they occur,

Emphasizing that the right to access to justice for all, including obtaining a quick, effective and fair response to protect their rights, prevent or solve disputes and control abuse of power through a transparent and efficient process in which mechanisms are available, affordable and accountable, forms an important basis for strengthening the rule of law through the administration of justice,

Stressing the importance of accountability for violations and abuses of the rights of the child, in any circumstance, including for those committed in the family, school and other institutions, as well as during armed conflict, and the need to bring perpetrators to justice,

Recalling that every State should provide an effective framework in which children can pursue remedies to redress human rights violations,

Recognizing that the best interests of the child should be a primary consideration to be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels,

Noting that child-sensitive justice should be accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, and should fully respect the rights of the child,

Concerned that children worldwide suffer violations of their rights, while not all of them have access to a fair, timely and effective remedy,

Noting the various barriers to children's access to justice, including lack of awareness of the rights of the child, restrictions on the initiation of or participation in proceedings, the diversity and complexity of procedures, lack of trust in the justice system, lack of training of relevant officials, de jure and de facto discrimination, certain cultural and social norms, the stigma on the children associated with certain crimes, and physical barriers,

Recalling the need to prevent secondary victimization of children by the justice system in procedures involving or affecting them,

Expressing deep concern that, despite the recognition of the right of the child to express his or her views freely on all matters affecting him or her, and bearing in mind their evolving capacities, children are still seldom seriously consulted and involved in such matters owing to a variety of constraints and impediments and that the full implementation of this right in many parts of the world has yet to be fully realized,

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[9] Economic and Social Council resolution 2005/20, annex.
[10] Human Rights Council resolution 11/7, annex.
[11] General Assembly resolution 67/187, annex.
[12] General Assembly resolution 65/229, annex.
[13] Economic and Social Council resolution 2002/12, annex.

Stressing the need for a multidisciplinary approach to the issue of access to justice for children,

1. *Notes with appreciation* the report of the United Nations High Commissioner for Human Rights on access to justice for children;[14]

2. *Reaffirms* that every child whose rights have been violated shall have an effective remedy;

3. *Recalls* that children are entitled to the same legal guarantees and protection as are accorded to adults, including all fair trial guarantees, while enjoying at the same time the right to special protection because of their status as children;

4. *Emphasizes* that all children in contact with the justice system, including children alleged as, accused of, or recognized as having infringed penal law, victims and witnesses or children coming into contact with the justice system for other reasons, such as regarding their care, custody or protection, and in the context of administrative justice, including immigration, are entitled to the safeguarding of their rights, without discrimination of any kind;

5. *Recognizes* that certain children may face additional barriers in accessing justice and reaffirms the duty of States to respect and ensure an effective remedy and access to justice for each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status, and to this end calls upon States:

(*a*) To address additional barriers to access to justice which may exist for children belonging to particularly vulnerable groups, including, but not limited to, children placed in institutional settings or in alternative care, children deprived of their liberty, children with disabilities, children living in poverty, children living in the streets, children belonging to national or ethnic, religious and linguistic minorities, indigenous children, asylum-seeking, refugee and migrant children, including unaccompanied and separated migrant children, stateless children, children affected by HIV/AIDS, children involved in or affected by armed conflict or other violence, child victims of sale and sexual exploitation or child, early and forced marriage, children in the worst forms of child labour, children without parental care and children of parents alleged as, accused of or convicted of having infringed penal law;

(*b*) To take into account the specific needs of girls;

6. *Reaffirms* that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child must be a primary consideration guiding the entire process, bearing in mind that the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights of the child and the holistic development of the child;

7. *Recalls* the right of the child who is capable of forming his or her own views to express those views freely in all matters affecting the child, and that such views should be given due weight in accordance with the age and maturity of the child, and urges States to ensure that children are provided the opportunity to be heard in any judicial or administrative proceedings affecting them, either directly or through a representative or an

[14] A/HRC/25/35.

appropriate body, in accordance with article 12 of the Convention on the Rights of the Child, by taking steps to ensure that:

(*a*) Children have the opportunity to participate in an effective and meaningful way in all matters affecting them, including criminal, civil and administrative proceedings;

(*b*) All children capable of forming their views are given an opportunity to express themselves directly or indirectly, in person or through a representative, in a manner appropriate to their level of understanding, and that such views are given due consideration;

(*c*) Children receive information about the processes in which they are involved, the options available to them in these procedures and the possible consequences of these options, in a manner adapted to their age, maturity and circumstances, conveyed in a language they understand and in a gender- and culture-sensitive manner;

(*d*) The consequences of any decisions affecting the child are explained to him or her in a way that he or she understands;

(*e*) The methodology used to question or otherwise elicit information from children respects their rights, is child-sensitive and adapted to the child's individual circumstances;

8. *Reaffirms* the duty of all States to protect children from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, and calls upon States:

(*a*) To ensure a safe environment for children in justice processes and that children, including unaccompanied children, in contact with the justice system are protected from any form of hardship by adapting procedures and adopting appropriate protective measures against abuse, exploitation, manipulation, violence, including sexual and gender-based violence, harassment, intimidation, reprisals or secondary victimization, taking into account that the risks faced by boys and girls may differ and that special precautionary measures may be needed when the alleged perpetrator is a parent, a member of the family or a primary caregiver;

(*b*) To ensure that children are treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs;

(*c*) To institute child-sensitive procedures and safeguards, such as interview rooms designed for children, recesses during a child's testimony, reducing the number of interviews, statements and hearings, and avoiding direct contact between victims, witnesses and alleged perpetrators;

(*d*) To set up procedures enabling proceedings regarding violations of the rights of the child which constitute a breach of criminal codes to proceed ex officio;

(*e*) To ensure the right of every child alleged as, accused of or recognized as having infringed penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society;

(*f*) To ensure that children are not subjected to torture or other cruel, inhuman or degrading treatment or punishment;

(*g*) To ensure that, under their legislation and in practice, neither capital punishment nor life imprisonment are imposed for offences committed by persons below 18 years of age;

(*h*) To enact or review legislation to ensure that any conduct not considered a criminal offence or not penalized if committed by an adult is not considered a criminal

offence and not penalized if committed by a child, in order to prevent the child's stigmatization, discrimination, victimization and criminalization;

(*i*) To criminalize the sale and sexual exploitation of children, and to establish jurisdiction over these offences when committed in their territory or by their nationals abroad, and to reinforce police and judicial transnational cooperation on information-sharing related to child victims and perpetrators of the sale and sexual exploitation of children, in accordance with domestic laws and policies, in order to facilitate access to justice of child victims;

(*j*) To take special measures to protect children in contact with the criminal justice system, including by providing adequate legal and other appropriate assistance;

(*k*) To consider establishing policies to govern the work of all persons involved in the judicial processes involving children, with a view to ensuring respect for their rights;

(*l*) To ensure that children have access to relevant therapeutic services and measures for victims of neglect, violence, abuse or other crimes in order to prevent the re-victimization of the child and to support healing and reintegration;

(*m*) To ensure the training of all persons working with and for children, including judges, public prosecutors, police, teachers and school administrators, prison staff, probation officers, social workers, health professionals, as well as persons working in the alternative care system, public administration and immigration and border control, on legislation and policies relevant to the rights of the child, including anti-discrimination and gender equality laws, alternatives to detention, child-sensitive counselling, complaint and reporting mechanisms and child-sensitive skills to communicate with children, and to promote such training for civil society actors and traditional leaders;

(*n*) To ensure that the child's privacy is fully respected at all stages of proceedings;

(*o*) To ensure prompt action and rapid enforcement of decisions in proceedings affecting children;

9. *Reaffirms* the need to respect all legal guarantees and safeguards at all stages of all justice processes concerning children, including due process, the right to privacy, the guarantee of legal aid and other appropriate assistance under the same or more lenient conditions as adults, and the right to challenge decisions with a higher judicial authority;

10. *Also reaffirms* the responsibilities, rights and duties of parents, legal guardians or other persons legally responsible for the child to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of its rights;

11. *Stresses* that children should have their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parent or other legal guardian;

12. *Also stresses* that legal aid practitioners and lawyers representing children should be trained in and knowledgeable of children's rights and related issues, be capable of communicating with children at their level of understanding, and strive to bring forward the opinion of the child;

13. *Calls upon* States to take steps to remove any possible barriers to children's access to justice, including by;

(*a*) Ensuring that their national legal systems provide effective remedies to children for violations and abuses of their rights, and that children have the possibility to initiate legal proceedings in cases of violations of their rights;

(*b*) Ensuring equal access for children to non-judicial complaints mechanisms and alternative dispute resolution mechanisms;

(*c*) Ensuring that counselling, reporting and complaints mechanisms are accessible to all children, effective, safe and child-sensitive, that they pursue the best interests of the child at all times and that they comply with international human rights standards;

(*d*) Addressing additional barriers and adopting special protective measures to safeguard the rights of children in particularly vulnerable situations to access justice and participate in proceedings;

(*e*) Making information on the rights of the child, on the legal system and on access to legal aid widely available to children in a language they understand and in a manner appropriate for their age and maturity, as well as to parents and legal guardians, teachers and people working with and for children;

(*f*) Ensuring that information and support are equally available and, when necessary, adapted to the needs of children with disabilities, children belonging to national or ethnic, religious and linguistic minorities and children belonging to other vulnerable groups, and accessible to children in detention and other closed facilities;

(*g*) Ensuring universal birth registration and age documentation without discrimination of any kind, irrespective of the legal status of the child;

(*h*) Ensuring children's informed consent to decisions in line with their evolving capacities;

(*i*) Increasing public awareness of the rights of the child and, in particular, of their right to express their views freely in all matters affecting them;

(*j*) Developing and strengthening multidisciplinary capacity-building and training initiatives to ensure that all persons working with and for children have the necessary knowledge and skills relating to children's rights and needs;

(*k*) Ensuring that all children have access to legal and other appropriate assistance, including by supporting the establishment of child-sensitive legal aid systems;

(*l*) Encouraging the use of safe, non-intimidating and child-sensitive settings for dealing with cases involving children;

(*m*) With full respect to the child's privacy, encouraging close cooperation between different professionals, where appropriate, in order to obtain a comprehensive understanding of the child, including an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation;

(*n*) Ensuring that decisions are explained to children in a way and in a language they understand, in a manner appropriate to their age and maturity, and that an interpreter is provided free of charge if the child cannot understand or speak the language used in the proceedings;

(*o*) Ensuring that the child's right to appeal is not more restricted than that of adults;

(*p*) Ensuring systematic enforcement of decisions through a predictable process, thus enhancing confidence in the justice system;

(*q*) Addressing social and cultural norms and customs that may prevent children from accessing justice and claiming redress;

(*r*) Taking into consideration the need to ensure that statutes of limitation periods do not apply for gross violations of international human rights law and are not unduly restrictive for other types of violations, including by ensuring, where appropriate, that they do not begin running before the child has reached majority;

(*s*) Considering, wherever possible, reparations for child victims of rights violations, in order to achieve full redress and reintegration, and that procedures for obtaining and enforcing reparation are readily accessible and child-sensitive;

14. *Recognizes* that alternative mechanisms for solving disputes and seeking redress for violations of the rights of the child, such as diversion, restorative justice processes, mediation, conciliation, arbitration, community-based programmes, complaints mechanisms of national human rights institutions, customary and religious justice processes, or company grievance mechanisms, can provide quick, affordable and accessible remedies, and help to reintegrate the child, while stressing that such mechanisms must be based on strict compliance with international human rights standards and procedural safeguards, and be child- and gender-sensitive;

15. *Encourages* States to allow children, their representatives, civil society organizations and national human rights institutions to bring cases on behalf of or in support of a group of children, or in the public interest, including group litigation and collective or class action suits, as a way to challenge laws, policies, norms and practices that negatively affect the rights of the child, and to ensure that judicial decisions have wider benefits for children, including those who face additional challenges in initiating judicial proceedings;

16. *Calls upon* States to strengthen child rights monitoring, reporting and complaint and accountability systems, including by designating or establishing an independent human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) with the responsibility of promoting and monitoring respect for the rights of the child;

17. *Encourages* States to develop and strengthen the collection, analysis and dissemination of data for national statistics in the area of children's access to justice and, as far as possible, to use data disaggregated by relevant factors that may lead to disparities and other statistical indicators at the subnational, national, ,subregional, regional and international levels, in order to develop and assess social and other policies and programmes so that economic and social resources are used efficiently and effectively for the full realization of the rights of the child;

18. *Urges* States to systematically integrate children's access to justice in justice sector reforms, rule of law initiatives and national planning processes, such as national development plans and justice sector-wide approaches, and support it through the national budget;

19. *Invites* States, upon their request, to benefit from technical advice and assistance in access to justice and child justice matters provided by relevant United Nations agencies and programmes, and encourages the United Nations High Commissioner for Human Rights to reinforce advisory services and technical assistance relating to access to justice for children;

20. *Emphasizes* the relevance and importance of international cooperation in support of national efforts in the area of child-sensitive justice;

21. *Encourages* States to incorporate detailed and accurate information relating to access to justice for children, including on progress made and challenges encountered and statistics and comparable data, in their periodic reports and information provided to the

universal periodic review mechanism and other relevant United Nations monitoring mechanisms;

22. *Recalls* the importance of access to regional and international justice mechanisms when it is ascertained that domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief, and, in this connection, encourages States to become party to relevant regional and international instruments;

23. *Invites* United Nations bodies, agencies, mechanisms, plans and programmes that support efforts of States to strengthen their judiciary systems, the administration of justice and the rule of law to incorporate access to justice for children into their work, in accordance with their mandates;

24. *Decides* to continue its consideration of the question of the rights of the child in accordance with its programme of work and its resolutions 7/29 of 28 March 2008 and 19/37 of 23 March 2012, and to focus its next full-day meeting on the theme of "towards better investment in the rights of the child", and invites the High Commissioner to prepare a report on that issue, in close collaboration with relevant stakeholders, including States, the United Nations Children's Fund, other relevant United Nations bodies and agencies, relevant special procedures mandate holders, regional organizations and human rights bodies, civil society, national human rights institutions and children themselves, and to present it to the Council at its twenty-eighth session, to inform the annual day of discussion on the rights of the child, and requests the High Commissioner to circulate a summary report on the next full-day meeting on the rights of the child;

25. *Welcomes* the work and contribution of the Special Rapporteur on the sale of children, child prostitution and child pornography, and decides to extend for a period of three years the mandate of the Special Rapporteur, in accordance with Human Rights Council resolution 7/13 of 27 March 2008.